

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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**COMPLETE TITLE OF CASE:**

**ROBERT LUVERNE VANDEWIELE, RESPONDENT,**

**v.**

**DIRECTOR OF REVENUE, APPELLANT.**

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DOCKET NUMBER WD69251  
(consolidated with WD69252)

DATE: July 14, 2009

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Appeal From:  
JOHNSON COUNTY CIRCUIT COURT  
THE HONORABLE JOSEPH PAUL DANDURAND, JUDGE

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Appellate Judges:  
Division One: Alok Ahuja, P.J., Harold Lowenstein, J. and Thomas Newton, C.J.

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Attorneys:  
James Artelle Chenault, III, Esq., Jefferson City, MO, **for appellant.**

J. Kirk Rahm, Esq., Warrensburg, MO, **for respondent.**

# MISSOURI APPELLATE COURT OPINION SUMMARY

## COURT OF APPEALS – WESTERN DISTRICT

ROBERT LUVERN VANDEWIELE,

RESPONDENT,

V.

DIRECTOR OF REVENUE,

APPELLANT.

WD69251 (consolidated with WD69252)

Johnson County

Before Division One Judges: Alok Ahuja, P.J., Harold Lowenstein, J. and Thomas Newton, C.J.

On January 23, 2006, Vandewiele was arrested for driving while intoxicated. The arresting officer served a notice of suspension/revocation on Vandewiele at that time. Vandewiele timely requested an administrative hearing.

On February 10, 2006, the Director sent Vandewiele two pages of documents. Although the first page is unambiguously limited to action against his commercial driving license (“CDL”), the second page indicated that Vandewiele’s base driving privilege was being suspended simultaneously with the action against his CDL.

Vandewiele filed a petition in the Circuit Court of Johnson County on February 16, 2006, seeking review of the Director’s February 10 action, alleging that it was unlawful because taken without an administrative hearing.

The Director held an administrative hearing on March 15, 2006. On March 16, 2006, the administrative hearing officer notified Vandewiele (again) of the decision to suspend his base driving privilege and disqualify his CDL.

In response to the March 16, 2006 notice, Vandewiele filed a second action in the Johnson County circuit court, alleging that the Director had already rendered a “final decision” on February 10, which was the subject of an existing judicial review proceeding, and that the Director accordingly lacked jurisdiction to render a “second” final decision on March 16.

In the first case, the circuit court found that the Director’s February 10 notice both disqualified Vandewiele’s CDL, and suspended his base driving privilege. The court concluded that the notice was unlawful because it was issued without a hearing.

In its Final Judgment in the second case, the circuit court held that the March 16 action was unlawful because the Director had already made a final decision on February 10, and that decision was timely and successfully appealed in the first case. The trial

court further concluded that the Director of Revenue has no authority to make multiple disqualifications or suspensions of a driving privilege for the same alleged event. The trial court assessed costs against the Director.

**AFFIRMED IN PART, BUT MODIFIED TO DELETE COST AWARD.**

**Division One Holds:**

Contrary to the Director's arguments, we conclude that the February 10, 2006 notice suspended Vandewiele's base driving privileges, in addition to disqualifying his CDL. Because that action was taken without providing Vandewiele with the hearing he had properly requested, it cannot be sustained. Under controlling caselaw, the Director's attempt to convene an administrative hearing following the February 10 notice, and following Vandewiele's filing of his judicial review proceeding, is ineffective, and cannot alter the lawfulness of the Director's actions.

The same result holds for the disqualification of Vandewiele's CDL. To disqualify his CDL under the facts of this case, Vandewiele must have first been convicted of driving under the influence of alcohol or some other controlled substance. No grounds existed as of February 10, 2006, to disqualify Vandewiele's CDL, since there had been no adjudication of any kind, in a courtroom or administrative proceeding, that he had violated relevant law.

Finally, and as Vandewiele concedes, the trial court's assessment of costs against the Director was erroneous, as there is no statutory authority for such an award. Consequently, while we affirm the trial court's judgment on the merits, we modify the judgment to delete the trial court's award of costs to Vandewiele.

**Opinion by: Alok Ahuja, Judge**

July 14, 2009

<p><b>THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.</b></p>
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